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July 10, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D. C. 20554

Re: Ex Parte - CC Docket 96-98
Implementation of the Local Competition Provisions
of the Telecommunications Act of 1996

Dear Mr. Caton:

This letter responds to the request of Mr. Robert Tanner of the Policy and Program Planning Division of the Commission's Common Carrier Bureau to provide information about AT&T's marketplace experience with the Rochester (NY) Open Market Plan.

For inclusion in the public record in the above -referenced proceeding attached are the following three documents filed with or ordered by the State of New York Public Service Commission:

1) AT&T Communications of New York, Inc. 's Petition For Rehearing of Opinion No. 94-25, dated December 9, 1994,

2) AT&T Communications of New York, Inc. 's Complaint, Petition for a Declaratory Ruling and for Reconsideration of Opinion No. 94-25, dated October 3, 1995, and

3) State of New York Public Service Commission Order Reconvening Parties to the Open Market Plan and Determining Petition for Rehearing and Declaratory Relief, dated February 2, 1996.

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In accordance with Section 1.1206(a)(1) of the Commission's Rules, two (2) copies of this Notice are being to the Secretary of the FCC.

Sincerely,

Bruce K. Cox

Attachments

cc: Mr. Stuart Kupinsky
Mr. Robert Tanner

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Rochester Telephone Corporation for Approval of Proposed Restructuring Plan	Case 93-C-0103
Petition of Rochester Telephone Corporation for Approval of a New Multi Year Rate Stability Agreement	Case 93-C-0033

JUL 10 1996

AT&T Communications of New York, Inc.'s
Petition For Rehearing of Opinion No. 94-25

AT&T Communications of New York, Inc. ("AT&T") submits this petition for rehearing and reconsideration of Opinion No. 94-25.[1] AT&T fully supports opening the Rochester local exchange marketplace to competition and would seriously consider participating in a market test as a provider of local service on a resold basis. AT&T is concerned, however, that a fair market test, which is in the best interest of end users, cannot take place under the current situation.

Specifically, newly discovered information clearly demonstrates that on January 1, 1995, numerous technical and operational impediments, which degrade overall service quality,

1 Case Nos. 93-C-0103 and 93-C-0033, Opinion and Order Approving Joint Stipulation and Agreement, Opinion No. 94-25, dated November 10, 1994 ("Opinion 94-25").

will make it very difficult to compete as a reseller with Rochester Telephone Company's ("RTC") retail unit, RTC-R, under the Open Market Plan ("OMP"). These impediments include the absence of a fully automated interface into RTC's customer provisioning, maintenance, administration, and operations systems, RTC's control over the telephone numbering provisioning process, and RTC's proposed handling of operator service calls and calling card issues. As will be demonstrated hereinafter, RTC's decision not to remedy this situation until sometime in the undefined distant future will result in service degradation for resellers' end users and will put potential resellers of RTC's wholesale services at a clear and insurmountable competitive disadvantage vis-à-vis RTC-R. This is contrary to the public interest and fails to strike the "fair balance" the Commission has said it seeks to achieve. It also undermines any claim that the Rochester local exchange marketplace is open to competition and calls into question the very basis upon which this Commission has granted RTC the large degree of regulatory relief it will receive come January 1, 1995.

AT&T, therefore, strongly urges the Commission to order RTC to provide, no later than the first quarter of 1995, the same essential technical and operational capabilities to potential resellers of its wholesale services enjoyed by RTC-R. In addition, RTC should be required to do so at rates that can reasonably be expected to allow competition to develop, resulting in end users' overall telecommunications needs being met. These needs include competitive prices, innovative service offerings, and on-going service quality improvements. Until RTC implements these necessary technical and operational changes to its proposed plan, the Commission should order RTC immediately to increase the wholesale discount to 25% of retail rates to reflect the inferior quality of the wholesale service RTC presently intends to offer resellers as compared to its retail service offering. Only then will the Commission have achieved an initial approach to local exchange competition that will provide some of the intended advantages to customers in the Rochester local exchange marketplace.

The underlying rationale for the OMP given by its proponents is that it will open the local calling area currently served by RTC to full, fair and effective competition. (Tr. 155). In point of fact, the OMP is a step toward establishing the conditions that will permit viable local exchange competition. However, it does not go far enough. The deficiencies in the OMP have been identified by AT&T and other parties in previous filings in this proceeding and will not be repeated here. These deficiencies have also been recognized by the Administrative Law Judge in his Recommended Decision and by the Commission in Opinion 94-25. In virtually every instance, however, the Commission has determined, with limited and inadequate modification, to permit the OMP to proceed to implementation on January 1, 1995. In so doing, the Commission has repeatedly stated that Staff will conduct periodic reviews of various aspects of the plan "in view of marketplace experience" and advise the Commission if changes in the OMP should be made.[2]

AT&T is in a position to provide the Commission with the "marketplace" experience, especially the experience of four months of work with RTC to prepare for reseller entry on January 1, 1995, that demonstrates that significant changes are required before the OMP should be allowed to go into effect.

Technical and Operational Differences, Exclusively Within the Control, Ability And Timing of RTC To Correct, Place Potential Resellers of RTC's Wholesale Services At A Clear And Insurmountable Competitive Disadvantage In Providing End Users With Quality Service Vis-à-Vis RTC's Retail Provider

Over the past few months AT&T has been working with RTC exploring the feasibility of AT&T engaging in a market test as a provider of local service on a resold basis in RTC territory. AT&T hopes to continue to work amicably with RTC to identify the technical, administrative and operational support a reseller of RTC's wholesale services would need from RTC in order to enter the local exchange marketplace and to obtain this support in a timely, efficient, cost effective and user-friendly manner. During the course of these discussions, however, it has become increasingly apparent that on January 1, 1995, the date the OMP is scheduled to be implemented, RTC will

2 Opinion 94-25, pp. 27, 28, 31.

not be able to provide local service on a wholesale basis for resale in the same manner as it provides RTC's retail service. The major deficiencies, detailed below, give RTC-R an insuperable advantage over its potential reseller competitors in the provisioning of local exchange service and clearly evidence that unless immediate corrective action is taken, come January 1, 1995, and for some significant time thereafter, resellers will only be able to offer service which is inferior to RTC-R.

(A) RTC's Lack Of An Automated Platform For Wholesale Services Favors RTC-R To The Disadvantage Of Its Potential Reseller Competitors And Their End Users

RTC presently has in place fully automated customer provisioning, maintenance, administration and operations systems that enable RTC to identify and to respond to customer information and service requests in an accurate and timely fashion. On January 1, 1995, these systems will be part of RTC. In sharp contrast, RTC has neither developed nor committed to when it will be able to develop or implement a fully automated interface into these systems that will enable resellers of RTC's wholesale services to process and monitor their customer requests in a similarly accurate, expeditious and efficient manner. Instead, RTC has advised AT&T that RTC intends to process reseller requests for their customers' provisioning, maintenance and repair services on a manual basis.

Manual processes are, by their very nature, subject to human error at each step and are likely to provide inferior quality. This disparity of treatment will subject reseller customers to a number of inconveniences not experienced by RTC's retail customers. To illustrate, a customer wishing to obtain local exchange service from RTC-R, need only place a single telephone call to RTC-R. RTC-R's customer will immediately be provided with the service activation date and the new telephone number. Compare this to the situation faced by a customer who designates a reseller as his primary local carrier ("PLC"). When a reseller's customer places a call to the reseller to obtain service, the reseller is only able to take the required information. The reseller is unable to complete the transaction within the initial call. This is because, under the processes established by RTC to obtain the service activation date and the applicable telephone number, the reseller must complete and fax a seven page form to RTC-W, who will then manually process the form.[3] RTC presently estimates that this manual process will require, at a minimum, three to four hours to complete. If RTC-W rejects the service order for any reason that requires the reseller to recontact the customer, extended additional delays are likely. These delays will cause customer dissatisfaction with the quality of

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3 As a general rule, RTC has refused to accept telephone calls for service activation and number assignment. RTC has, however, agreed to consider accepting telephone orders in extreme situations, e.g., where an end user is being harassed and needs an immediate number change.

overall service provided by resellers. Moreover, these time frames may be volume dependent. Therefore, the more customer orders a reseller submits, the longer the delays may be, and the more dissatisfied its customers will become.

A similarly unsatisfactory situation exists regarding scheduling of customer service installation, complaints and repair requests. An RTC-R customer calling to request, for example, installation or repairs will receive full scheduling information at the time the call is placed. In contrast, a reseller's customer cannot obtain the same information at the time he calls his carrier with his request. RTC-W has no automated process that a reseller can access to determine when service installation, maintenance or repair will occur or has occurred, or when service has been completed. The reseller must fax its request to RTC-W, at which time the request will be manually processed. When this is done, however long that may take, RTC-W will advise the reseller of the scheduling. Only then can the reseller advise its customer as to when service will be installed or repaired.

This situation becomes even more unsatisfactory if the original appointment is missed. Once the reseller becomes aware of the missed appointment, the reseller is required to reschedule. RTC employs the same manual procedures, with their attendant delays, that were employed to set the original date, thereby causing still further customer dissatisfaction with the service provided by the reseller.

RTC agrees that a fully automated system is the optimal solution. RTC claims, however, that it has not implemented this solution because it has not yet developed system safeguards that would prevent a reseller from accessing other carriers' customer data.

The ability of resellers to access their customers' information in RTC's databases does not require a rewrite of the entire system. RTC could provide the necessary safeguards effectively and simply by building a gateway system that would restrict access by each reseller to only that reseller's customers' information. Moreover, RTC had and has the ability to create this gateway system, or any other form of safeguards, independently. It did not and does not need any input or concurrence from resellers.

RTC has recognized this most fundamental automation need for some time. Indeed, in its illustrative wholesale tariff issued June 30, 1994, RTC offered various automated interfaces into RTC's customer and billing system databases.[4] Presumably,

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[4] See, e.g., P.S.C. No. X-Telephone, RNET Wholesale Tariff, dated June 30, 1994, ("Illustrative Tariff") Section 1, Original Page 15, Paragraph L.9, Electronic Interface Port, and Section 1, Original Page 16, Paragraph O, Training of Billing System Personnel.

at the time it distributed its illustrative tariff, it was RTC's intent to have this essential automation capability available when its tariffs and the OMP went into effect on January 1, 1995.

This has not happened. To the contrary, and evidencing the degree to which RTC is unprepared to implement the OMP in an even-handed manner on January 1, 1995, is the fact that the automation capabilities are conspicuously absent from RTC's tariff for wholesale services filed on November 28, 1994. Indeed, RTC has not committed to when it will be able to develop and implement the needed automation capabilities and interfaces. This delay in the development and implementation of the automation platform is most advantageous to RTC's retail operations and most disadvantageous to potential resellers of RTC's wholesale services and their end user customers.

(B) The Proposed Number Provisioning Process Favors RTC-R Over Potential Competitors

On January 1, 1995, RTC will retain control of the current RTC's telephone number database and will be responsible for distributing these telephone numbers among providers of local exchange service. RTC has refused to provide resellers of bundled link and port with a block of numbers or an automated link to the numbering database. This unfairly discriminates against resellers in favor of RTC-R and negatively impacts resellers' ability to compete with RTC-R.

A customer who wishes to use RTC's retail service will receive a telephone number, which might be a preferred telephone number, immediately during the initial call. In contrast, a customer wishing to use a reseller of RTC's wholesale service cannot receive either a regular or a preferred telephone number during the initial call. Instead, the reseller must fax RTC the request, and will not receive a telephone number from RTC for several hours. Then the reseller has to call the customer back to communicate the number assigned or to discuss alternatives if a particular preferred number is not available. The reseller's inability to provide a telephone number immediately will result in customer dissatisfaction because the end user customer will be required to make repeated contacts with the resellers to obtain their number. In contrast, RTC-R and its customer are able to complete the entire transaction in a single phone call. Not only is this more satisfactory to the customer, it is less costly for RTC-R.

As presently proposed by RTC, the telephone number provisioning process is yet another impediment in the roadway to the growth of effective competition. This impediment may prove insurmountable to many potential resellers. Therefore, RTC must provide the interfaces needed to give resellers direct access to RTC's telephone number database. Alternatively, RTC must provide resellers with individual blocks of telephone numbers for distribution to their customers. Either approach will enhance the likelihood that full, fair and effective competition will develop for local service in Rochester's territory. The currently proposed approach will only thwart the development of this competition.

(C) RTC's Proposed Handling Of Operator Service Calls Favors RTC-R Over Potential Competitors And Will Lead To End User Confusion Due To A Lack Of Branding.

After the OMP is implemented, all calls to the local operator will be routed by RTC over its network to RTC's operator service facilities. This routing approach will be used regardless of whether the call is placed by an RTC retail customer or it is placed by the customer of a carrier who is reselling RTC's wholesale service. This effectively denies the reseller's customer the option of obtaining local operator services on a 0+/0- basis from his carrier of choice. This approach presents a number of problems that will inhibit the development of full and fair competition in Rochester's territory and prohibits resellers from providing their customers with operator services branding.

The provision of operator services is an element of local service that can easily be unbundled and offered on a stand-alone basis. Unlike many aspects of local service, the provision of operator services does not require a potential provider to choose between duplicating the already existing network infrastructure or reselling the operator services of the incumbent local exchange carrier.

The operator services market is already very competitive, with a large number of operator service providers offering a wide variety of services and options on both a national and regional level. This intense competition has led to significant innovations and advancements in the interexchange operator services marketplace. The existing operator services facilities now serving the interexchange marketplace can easily be interconnected with the local exchange network to serve customers within the Rochester calling area and to bring the benefits of competition to the local market. The provision of local operator services is an area, therefore, that may be very conducive to competitive entry. Under RTC's current routing proposal, however, RTC will remain the monopoly provider of local operator services by denying competitors the ability to offer a profitable alternative that meets customer needs.

AT&T has requested that the local operator services calls be routed to the operator services system of the PLC. RTC has rejected this request, despite the fact the RTC agrees that its switch is able to recognize and route calls for specific end users based on line class codes. There is no technological impediment, therefore, to provisioning operator services in the manner requested by AT&T.

RTC has advised AT&T that its reasons for not using the Line Class Code capability in the switches to route local operator services traffic are based on concerns over the labor required and the costs incurred to implement such an arrangement. RTC expressed the further concern the requested routing would exhaust the switch resources.

AT&T would reasonably expect RTC to be able to recover legitimate costs associated with implementing the requested arrangement. Further, based on AT&T's knowledge of the resources and capabilities of the switches in question, which switches were designed and manufactured by AT&T, RTC's concern over resource exhaustion is unfounded.

RTC's plan for the routing of local operator traffic results in an additional handicap to all carriers in Rochester territory in that it prevents local operator service calls from being branded by any carrier, including RTC. Branding allows carriers to bring their individual competitive capabilities to the local operator services marketplace and reassures their end users that their carrier of choice is handling the transaction. RTC should not be permitted unilaterally to decide on behalf of all carriers, including resellers, that branding will not take place in Rochester territory.

At one time, RTC apparently intended to provision at least some aspects of operator services in the manner suggested by

AT&T. This is evidenced by RTC's inclusion in its illustrative tariff of an interface to its Directory Assistance database.[5] RTC removed this provision, however, from its wholesale tariff filed on November 28, 1994. This deletion illustrates further that RTC is unable to provide an adequate automation platform at any time in the near future, and certainly not before the OMP is scheduled to be implemented, for its wholesale service offering.

(D) RTC's Calling Card Number Control Favors RTC-R Over Potential Competitors To The Disadvantage Of Customers In Rochester Territory.

RTC presently offers to end users, and will continue to offer, a telephone line number (TLN") based calling card that can be used ubiquituosly on a 0+ basis. For potential competitors of RTC to be able to offer a similar type of calling card, RTC would have to: (a) relinquish its claim to the TLN of any end user who chooses a PLC other than RTC; (b) allow the chosen PLC to issue, and bill for, its own TLN card; and (c) allow the chosen PLC access to enter and modify data for such customers in the appropriate LIDB database. An alternative arrangement, albeit less equitable, would be for RTC to resell its TLN card capability.

AT&T has discussed both alternatives with RTC. RTC has been and remains steadfast in its refusal to consider either

5 Illustrative Tariff, Section 11, Original Page 7, Paragraph G, Directory Assistance Database Query.

alternative and has offered no suggestions as to how this impasse can be resolved in a mutually satisfactory manner. RTC has, in fact, recently taken a contrary approach by attempting to partner with RCI to reissue all RTC local calling cards as joint RTC/RCI proprietary calling cards. Clearly, this action prior to the implementation of the OMP, which at a minimum would violate the spirit of the OMP, is an indication of the anti-competitive dangers in the OMP. Although RTC halted this activity after AT&T complained, resellers of RTC local service remain unable to offer a comparable local calling card option.

CONCLUSION

The ability to correct the above described deficiencies that prevent RTC from realizing its often expressed intent to implement the OMP in a fair and equal manner vis-à-vis RTC and its competitors for the retail provision of local exchange service -- and the timing of these essential corrections -- is in the exclusive control of RTC. Notwithstanding the clear disadvantage these technical and operational deficiencies present to competitors, RTC has advised AT&T that it will not know until March or April of 1995 when -- or even if -- it will be able to remedy these deficiencies. In short, RTC has created a situation that decidedly advantages the incumbent local exchange service provider, RTC, and places potential competitors at great risk of incurring customer dissatisfaction with the resellers' service as a result of the delays and other inconveniences built into RTC's proposed current structure for the handling of reseller provisioning, maintenance, administration, and operations. While AT&T recognizes and appreciates the many difficulties associated with a corporate reorganization of the magnitude RTC has undertaken, the identified disparities in service between that available to RTC-R's customers and that available to the customers of potential reseller competitors of RTC are so fundamental that they must be eliminated before RTC will be capable of implementing its reorganization in a manner conducive to the development of competition.

Without the changes AT&T's marketplace experience demonstrates are essential, resellers cannot provide service quality that is comparable to that provided by RTC-R. However, the Commission will have freed substantial portions of the new RTC enterprise from the restraints of regulation traditionally borne by monopolists, without having established all of the necessary conditions for a test of true local exchange competition. AT&T, therefore, urges the Commission to order RTC to provide, no later than the first quarter of 1995, the same essential technical and operational capabilities to potential resellers as it itself enjoys as a retail provider of service. Moreover, until RTC implements these necessary technical and operational changes to its proposed plan, the Commission should order RTC immediately to increase the proposed wholesale discount to 25% of retail rates to reflect the inferior quality of wholesale service until such time as these deficiencies are remedied.

Respectfully submitted,

Katherine B. White

cc: All Active Parties

Michael J. Morrissey
General Attorney

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October 3, 1995

Honorable John C Crary
Secretary,
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Petition of Rochester Telephone Corporation for Approval of Proposed Restructuring Plan	:	Case 93-C0103
Petition of Rochester Telephone Corporation for Approval of a New Multi-Year Rate Stability Agreement	:	Case 93-C-0033

Dear Secretary Crary:

Attached is an original and 25 copies of the Complaint, Petition for a Declaratory Ruling and for Reconsideration of Opinion No. 94-25 of AT&T Communications of New York, Inc. in the captioned proceedings

Yours truly
Michael J. Morrissey/NV

cc: Gregg Sayre
All parties

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

Petition of Rochester Telephone Corporation for Approval of Proposed Restructuring Plan	Case 93-C-0103

Petition of Rochester Telephone Corporation for Approval of a New Multi Year Rate Stability Agreement	Case 93-C-0033

AT&T COMMUNICATIONS OF NEW YORK, INC. COMPLAINT, PETITION FOR DECLARATORY JUDGMENT AND FOR RECONSIDERATION OF OPINION NO. 94-25

AT&T Communications of New York, Inc. ("AT&T") submits this Complaint, Petition for Declaratory Judgment and for Reconsideration of Opinion 94-25. Ten months of experience in dealing with Rochester Telephone Corporation ("RTC") as a reseller of RTC's residential service has made clear that Rochester is not prepared to provide service to wholesale competitors on a commercially reasonable or competitively fair basis. The warnings that AT&T offered in its Petition for Rehearing, dated December 8, 1994, have proven to be only too well founded. Indeed, conditions are now materially worse than anticipated even at that time. The Committee on Standards and Competitive Procedures has been unable to generate any material change in RTC's offerings, much less induce RTC to provide wholesale services on commercially reasonable and competitively fair bases.

AT&T summarizes below eight critical areas where RTC has provided service at unfair prices or pursuant to unreasonable practices, and where negotiations with RTC have proven unsatisfactory or fruitless. AT&T asks for a declaratory judgment in each case that the relief AT&T seeks be provided by RTC. AT&T also petitions for a reopening of the Commission's decision in Opinion 94-25, and a restructuring of the Rochester Open Market Plan in a fashion that will promote genuine competition in Rochester territory.

On November 10, 1994, by Opinion 94-25, the Commission adopted the Rochester Open Market Plan ("OMP"). On December 8, 1994, AT&T petitioned for rehearing with respect to that Opinion. AT&T explained that:

> "newly discovered information clearly demonstrates that on January 1, 1995 numerous technological and operational impediments, which degrade overall service quality, will make it very difficult to compete as a reseller with Rochester Telephone Company's ("RTC") retail unit." (Petition for Rehearing, pp. 1-2).

AT&T sought in its Petition for Rehearing a Commission order directing Rochester:

> "to provide, no later than the first quarter 1995, the same essential technical and operational capabilities to potential resellers of its wholesale services enjoyed by RTC-R. In addition, RTC should be required to do so at rates that can reasonably be expected to allow competition to develop, resulting in end-users overall telecommunications needs being met." Id. 2-3.

On April 6, 1995, the Commission denied without prejudice AT&T's Petition for Rehearing. The Commission neither accepted nor rejected AT&T's analysis of the problems with the proposed RTC resale provisioning and pricing. Instead, it stated:

> "The potential need for further adjustment to the Open Market Plan was reconsidered in Opinion No. 94-25 and continues to be recognized. And the mechanisms established in the Joint Stipulation for resolution of problems such as those raised in AT&T's Petition should be given an opportunity to work before direct resort to the Commission is undertaken. Accordingly, AT&T's Petition for Rehearing will be denied without prejudice, pending the outcome of these issues under review by the Committee on Standards and Procedures."

The Commission explicitly stated that the proceedings were to be continued.

AT&T has spent more than a year working in good faith with RTC to establish the basis of a reasonable resale offering, including reasonable terms and conditions and reasonable prices. AT&T has, where necessary, made full use of the Committee on Standards and Procedures. Unfortunately, the Committee has been either unwilling or unable to deal with the problems faced by AT&T, the major resale competitor in the Rochester service area. This is not surprising when one considers that the Rochester representative to the Committee announced at a Committee meeting that it was "never Rochester's intent to give its wholesale competitors the same quality of service it would give its retail customers."

Notwithstanding AT&T's best efforts to reach accommodation with RTC both privately and at Committee meetings, however, AT&T has found Rochester unwilling to provide reasonable quality services on a reasonably priced basis. The principal unresolved problems are set forth below.

Price

1. Wholesale Discount.

Unlike the interexchange market, the local exchange market is distinctly not competitive. As a result, there is no market mechanism capable of operating in the local market similar to the market mechanisms in the interexchange market that generate for high volume service users deeply discounted prices that can then be the basis of commercial resale activity on behalf of smaller customers.

In the absence of such competitive pressures in the retail end of the local telecommunications market, the incumbent monopolist has no financial incentive to establish a rate structure voluntarily that will permit resale competition to occur. To the contrary, local exchange carriers have the ability and a strong financial incentive to establish a wholesale/retail price relationship so narrow as to effectively bar any possibility of viable entry by non-facilities based resellers. The Commission is, of course, aware of this.

The RTC 5% whole percent discount on local services is precisely such a commercially unreasonable discount. It is noteworthy that the discount is so patently inadequate that only AT&T has even attempted to offer services on a resale basis pursuant to its terms. As the Commission is also aware, AT&T ceased active marketing its resold local service some months ago.

The Rochester discount was adopted by RTC with the knowledge that a greater discount was possible and appropriate.

RTC spokespersons have acknowledged that RTC initially proposed discounts to wholesalers in the 30% range. This would be consistent with discounts in the long distance arena, where wholesale discounts usually run between 30% and 40%. AT&T estimates that for any firm to break even in the Rochester market by providing resold service, Rochester would need to offer discounts of not less than 35%.

2. <u>750 Minutes of Use Surcharge</u>

Closely related to the inadequacy of the wholesale discount is the RTC tariff requirement that, for every AT&T customer who uses flat rate local exchange service for more than 750 minutes per month (approximately 25 minutes of use per day), AT&T must pay a surcharge of nearly 50% of its flat rate charges. Approximately 35% of AT&T's residential customers exceed this limit each month. RTC has claimed that this cap was introduced to ensure that resellers would not buy residential lines and resell them as business lines. However, there are numerous other mechanisms, including an express tariff prohibition, available to prevent the resale of residential services to business customers. There have been no complaints of such resale on the part of AT&T. The surcharge is therefore unnecessary to accomplish any legitimate purpose.

The effect of the surcharge is to raise the average flat rate wholesale charge incurred by AT&T for many customers from 5% below the retail rate to substantially above it. It is noteworthy that Rochester customers have no comparable cap on the usage they may make of the RTC residential service. In combination with the 5% discount, the purpose and effect of this sur-